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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
David M. Pangrac et al.

Application No.: 09/748,717

Group Art Unit: 2623

Filed: December 22, 2000

Examiner: Saltarelli, Dominic D.

For: System and method for distributing information
via a communication network

RENEWED PETITION UNDER 37 C.F.R. § 1.137(b)

VIA FACSIMILE: (571) 273-8300

Attn: Office of Petitions

Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22213-1450

Dear Sir,

This is a renewed petition to revive the above-identified patent application under 37 C.F.R. § 1.137(b).

Background

The present application became abandoned for failure to submit a timely reply to the final Office Action mailed on October 31, 2006, in the present application. On August 31, 2007, Petitioner (the current assignee) filed a petition under 37 CFR § 1.137(b) to revive the application. On February 15, 2008, a Decision on Petition ("Decision") was mailed, dismissing the petition. In the Decision, the Petitions Examiner indicated the following:

"the records indicates that petitioner was not responsible for prosecution of the application when the reply necessary to avoid abandonment was due. Therefore, petitioner must provide a statement from the owner of the invention at the time of the abandonment explaining why action was not timely taken to prevent the application from becoming abandoned."

Decision at 1.

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Renewed Petition

In response to the Decision, Petitioner is presently filing this "Renewed Petition under 37 CFR § 1.137(b)". Included with this petition is a "Declaration of Ronald E. Ingalls in Support of Petition Under 37 CFR 1.137(b)". Mr. Ingalls is the Trustee for the Chapter 7 bankruptcy estate of Advent Networks, Inc., the owner of the present application at the time of the abandonment.

Mr. Ingalls' declaration indicates the following: As Trustee of the bankruptcy estate of Advent Networks, Inc., Mr. Ingalls was responsible for prosecution of the present application at the time of the abandonment. Because Mr. Ingalls was appointed Trustee only a short time before, he was not apprised about the application and about the issuance of the office action at the time of the abandonment. Five weeks thereafter, upon learning of the application and its abandonment, Mr. Ingalls immediately embarked on the most expeditious course of action for reviving the application. Mr. Ingalls notes that any course of action he would have chosen concerning the application would have required a motion to the court, notice to creditors and order of the court granting the motion. Such courses of action included (1) retaining patent counsel for reviving the application; (2) allowing the application to remain abandoned; or (3) selling the application. Mr. Ingalls chose to sell the application, whereby immediately upon consummation of the sale the new owner would take the necessary actions for reviving the application.

Indeed, while the motion to approve a sale of the application was pending before the court, Petitioner, the buyer, researched the application with respect to the merits for filing a petition to revive and with respect to the details for appropriately responding to the outstanding Office Action. The sale of the application was consummated on August 28, 2007, and immediately thereafter on August 31, 2007, Petitioner's initial petition to revive was submitted.

With the present filing of Mr. Ingalls' declaration, Petitioner believes that all requirements of § 1.137(b) have been satisfied and that this Renewed Petition is in condition of being granted.

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Conclusion

In view of the foregoing remarks, Petitioner respectfully requests that this Renewed Petition be granted and that prosecution of the present application be reopened. Should the Petitions Examiner have any questions pertaining to any of the foregoing, the Petitions Examiner is respectfully invited to contact the undersigned at the number indicated below.

Dated: April 11, 2008

Respectfully submitted,

By: /Benzion A. Wachsman/

Benzion A. Wachsman
for Assignee, Inceptia LLC*

Tel. (718) 928-2213

* A statement under 37 CFR 3.73(b) is attached hereto.

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DECLARATION OF RONALD E. INGALLS
IN SUPPORT OF PETITION UNDER 37 C.F.R. § 1.137(b)Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22213-1450

I, Ronald E. Ingalls, declare as follows:

1. I am the Trustee for the Bankruptcy Estate of Advent Networks, Inc. ("Estate" and "ANI" respectively).
2. On April 11, 2005, ANI filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court ("Court") for the Western District of Texas (Case No. 05-11997).
3. The Estate's primary assets comprised of its intellectual property, including a number of issued patents and pending patent applications.
4. During the Chapter 11 proceedings, the debtor, ANI, received Court approval to retain "Special Patent Counsel" for prosecuting several pending patent applications. Specifically, ANI received Court approval to retain the law firm, Dillon & Yudell, LLP.
5. On March 5, 2007, the bankruptcy was converted to a Chapter 7 proceeding. As a result of the conversion to Chapter 7, ANI's powers to administer assets of the Estate was automatically dissolved. Similarly, Dillon & Yudell's powers to prosecute the Estate's pending patent applications were also automatically dissolved.

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6. Under the Chapter 7 proceeding, I was appointed Trustee of the Estate and vested with all powers to manage and liquidate the Estate's assets, subject to Court approval.
7. As Trustee, I was responsible for prosecuting and maintaining the pending patent applications subject to Court approval. Similarly, was I to decide to abandon a particular patent application, I would also have required Court approval.
8. On June 6, 2007, I was notified by Mr. Benzion A. Wachsman, a principal of Inceptia LLC, that one the Estate's patent applications, U.S. patent application no. 09/748,717 (the "'717 application'"), became abandoned after my appointment as Trustee of the Estate. Mr. Wachsman, on behalf of Inceptia LLC, offered to purchase the Estate's entire patent portfolio, including the '717 application.
9. I am now informed that on October 31, 2006 the U.S.P.T.O. issued an Office Action ("Office Action") for the '717 application. The non-extendable statutory deadline for responding to the Office Action was on April 30, 2007.
10. My failure in responding to the Office Action by the non-extendable deadline was unintentional. I was appointed Trustee of the Estate as of March 5, 2007. As of June 6, 2007, I had yet to complete a full evaluation of the ANI bankruptcy case, including the necessary actions required for the Estate's patent portfolio. Prior to June 6, 2007, I was uninformed about the issuance of the Office Action for the '717 application and about the need to take action in a timely manner.
11. I am now informed that an unintentionally abandoned application can be revived in accordance with procedures and standards established by the U.S.P.T.O.
12. Upon learning of the abandonment status of the '717 application, the possible courses of action that were available to me were as follows: (a) retain "Special Patent Counsel" to file a petition ("Petition") for revival of the '717 application; (b) intentionally permit the '717 application to remain abandoned; or (c) sell the '717 application to Inceptia LLC or another buyer. Each of said courses of action would have required a (1) motion to the Court, (2) notice to ANI's creditors, (3) and approval of the Court; i.e. a wait period of

Decl. of Ronald E. Ingalls

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- twenty days or more, depending on the circumstances surrounding the motion, as well as on the extent of objections of creditors or other interested parties.
13. Retention of "Special Patent Counsel" would also have required that I search for competent counsel. Such Special Patent Counsel, would have then required additional time for researching the '717 application in order to effectively file the Petition along with the necessary submissions. This would have likely resulted in additional delay in filing the Petition beyond the delay period resulting from the motion, notice and approval of the Court. I opted to sell the '717 application to Inceptia LLC.
 14. On June 11, 2007, I filed a motion ("Motion") with the Court requesting approval to sell the Estate's patent portfolio to Inceptia LLC. However, subsequent to filing the Motion with the Court, I learned that the Estate's assets were subject to a security interest by a third party. In addition, another prospective buyer expressed an interest in purchasing the patent portfolio. I was therefore required to obtain consent of the security interest holder prior to entering into the sale, and to consider the offer of the other prospective buyer.
 15. After successfully obtaining consent to the sale from the holder of the security interest, I conducted an auction for the patent portfolio on August 6, 2007. Inceptia LLC was the winning bidder. On August 7, 2007, the Court entered an order approving a sale of the patent portfolio to Inceptia LLC. The sale was consummated on August 28, 2007.
 16. The entire delay in filing a petition with the U.S.P.T.O for reviving the '717 application, from the due date for responding to the Office Action and until the consummation of the sale of the '717 application to Inceptia LLC, was unintentional on my part.

I hereby declare that all statements made herein of my own knowledge are true and that all statements on information and belief are believed to be true.

Dated: 3/21/2008

Ronald E. Ingalls,
Trustee for the Chapter 7 Bankruptcy
Estate of Advent Networks, Inc.

Decl. of Ronald E. Ingalls

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STATEMENT UNDER 37 CFR § 3.73(b)

Inceptia LLC, a Delaware limited liability corporation, states that it is the assignee of the entire right, title and interest in the patent application identified above, by virtue of a chain of title from the inventor of the patent application identified above, to the current assignee as shown below:

1. From: Pangrac, DM; Gall, DT; Rose SW To: Pangrac & Associates Consultants, Inc.
The document was recorded in the United State Patent and Trademark Office at
Real 011744, Frame 0518.
2. From: Pangrac & Associates Consultants, Inc. To: Advent Networks, Inc.
The document was recorded in the United State Patent and Trademark Office at
Real 011744, Frame 0549.
3. From: Ronald E. Ingalls, Trustee To: Inceptia LLC
The document was recorded in the United State Patent and Trademark Office at
Real 020108, Frame 0754.
4. From: Ronald E. Ingalls, Trustee To: Inceptia LLC
The document was recorded in the United State Patent and Trademark Office at
Real 020285, Frame 0824.

The undersigned is duly authorized to act on behalf of Assignee.

Dated: April 11, 2008

Respectfully submitted,

Signature: /Benzion A. Wachsman/
Benzion A. Wachsman
General Manager, Inceptia LLC
(718) 928-2213